REMARKS

This Amendment incorporates the Examiner's suggestions and places the claims in condition for allowance. Claims 1-3, and 6-37 are pending in the application. Claim 4 was previously cancelled. Claim 5 is currently cancelled. Claims 1, 2, 6, 16, 17 and 27 are currently amended. Claim 38 is new.

I. Claim Rejections Under 35 U.S.C. 112, Second Paragraph

Claims 5 and 6 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is hereby cancelled without prejudice.

Claim 6 is hereby amended to depend from Claim 1. Applicant respectfully requests that the rejection of Claims 6 under 35 U.S.C. 112, Second Paragraph, be withdrawn.

II. Claim Rejections Under 35 U.S.C. 102(e)

Claims 1-3, 5, 6, 8-24, 26-28, and 31-37 stand rejected under 35 U.S.C. 102(e) as being anticipated by Aghera et al. (US 2004/0098715 Al, hereinafter Aghera). Applicant respectfully traverses.

In the current Office Action, the Examiner indicates that he agrees with Applicant's previous arguments that Aghera does not does not teach that "the server application can specify whether the transferred software or the currently running software will be loaded when the device boots." The Examiner, however, argues this limitation is not required by the recited claim language of Claims 1 and 16.

The Examiner has suggested that the claim limitations in Claims 1 and 16 reciting transferring or receiving "a selection identifying at least one of said transferred software and said currently running software" be amended to clearly state the limitation that "the server application can specify whether the transferred software or the currently running software will be loaded when the device boots." The Examiner's suggestion is well-taken, and Applicant herein amends Claims 1 and 16 accordingly.

Independent Claim 27 contains a similar limitation of receiving from a system operator "a selection identifying at least one of said transferred software and said currently running software." The Applicant also hereby adopts the Examiner's suggestion with respect to Claim 27 as well.

Claims 2 and 17 have been amended to properly depend from Claims 1 and 16 respectively in light of the amendments to Claims 1 and 16 discussed above. Claim 5 has been cancelled without prejudice as duplicative of limitations already present in Claim 1 as amended.

As amended, independent Claims 1, 16, and 27 contain elements limiting the claims to applications where "the server application can specify whether the transferred software or the currently running software will be loaded when the device boots." No such element is present in Aghera. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053, 814 F.2d 628, 631 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. Richardson v. Suzuki Motor Co., 9 USPQ2d 1913,1920, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Since, as argued above, independent Claims 1, 16, and 27 contain elements neither expressly or inherently described in by Aghera, Claims 1, 16, and 27 and their dependant claims are not anticipated by Aghera. Therefore, Applicant respectfully requests that the rejections of Claims 1-6, 8-24, 26-28 and 31-37 under 35 U.S.C. 102(e) as being anticipated Aghera be withdrawn.

III. Claim Rejections Under 35 U.S.C. 103(a)

Claims 7, 25, 29, and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Aghera et al. (US 2004/0098715 Al, hereinafter Aghera). Applicant respectfully traverses.

In the present application, Claim 7 is dependent upon Claim 1, Claim 25 is dependent upon Claim 16, and Claims 29 and 30 are dependent on Claim 27. As argued above, Claims 1, 16, and 27 contain limitations not taught or suggested by Aghera.

The Court of Appeals for the Federal Circuit has consistently held that where a claim is dependent upon a valid independent claim, the independent claim is *a fortiori* valid because it contains all the limitations of the independent claim plus further limitations. See, e.g., Hartness Intern. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100, 1108 (Fed. Cir. 1987). Therefore, Applicant respectfully requests that the rejections of Claims 7, 25, 29 and 30 under 35 U.S.C. 103(a) as being unpatentable over Aghera be withdrawn.

III. New Claims

Claim 38 has been added to more fully claim the disclosed subject matter. No new matter has been added.

IV. Conclusion

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that claims 1-3, and 6-38 are in condition for allowance and Notice to that effect is respectfully solicited. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, the Examiner is courteously requested to contact applicant's undersigned representative.

The Commissioner is authorized to charge any additional fees associated with this filing, or credit any overpayment, to Deposit Account No. 50-0653. If an extension of time is required, this should be considered a petition therefor.

Respectfully submitted,

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